

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

JACKSONS FOOD STORES, INC.

Defendant.

CIVIL ACTION NO. 2:17-cv-01285-TSZ

**JOINT STATUS REPORT AND  
DISCOVERY PLAN**

The Parties submit this Joint Status Report pursuant to the Court's Order of August 30, 2017 (ECF No. 4).

1. NATURE AND COMPLEXITY OF THE CASE

Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") filed this action against Defendant Jacksons Food Stores, Inc. ("Jacksons Food" or "Defendant") under Title I of the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, ("ADA" and "ADAAA") to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Nathaniel Prugh, who was adversely affected by such practices. The EEOC alleges that Jacksons Food discriminated against Mr. Prugh, a qualified individual with a disability, when it failed to hire Mr. Prugh for a

1 Customer Services Rep position on the basis of Mr. Prugh's disability. Mr. Prugh is deaf. The  
2 EEOC alleges that Defendant revoked its offer to interview Mr. Prugh after Mr. Prugh requested  
3 an American Sign Language ("ASL") interpreter for the interview as a reasonable  
4 accommodation. The EEOC seeks monetary and injunctive relief for Mr. Prugh, including  
5 pecuniary and nonpecuniary compensatory damages and punitive damages.

6 Jacksons Food Stores, Inc. denies EEOC's allegation and contends that the offer of an  
7 interview for Mr. Prugh was not revoked. An interpreter was to be provided for him at the  
8 interview. The interview did not happen because Mr. Prugh never returned the call asking to  
9 schedule the interview.  
10

11 The Parties believe that this is a relatively straightforward case and that discovery and  
12 trial are not expected to be complex.

13 2. JOINING OF ADDITIONAL PARTIES

14 April 19, 2018

15 3. USE OF MAGISTRATE JUDGE

16 The Parties do not consent to trial by Magistrate Judge.  
17

18 4. PROPOSED DISCOVERY PLAN

19 A. Initial Disclosures

20 The Parties held an FRCP 26(f) Conference on October 16, 2017 and continued  
21 discussions by e-mail throughout the drafting of this report. The Parties agree to exchange FRCP  
22 26(a) Initial Disclosures on November 14, 2017.  
23

24 B. Subjects, Timing, and Potential Phasing of Discovery  
25

1 The Parties anticipate conducting discovery on all matters raised in the pleadings. The  
 2 Parties believe that discovery can be completed by August 17, 2018. The Parties do not believe it  
 3 is necessary to conduct discovery in phases.

4 C. Electronically Stored Information

5 The EEOC discussed discovery of electronically stored information ("ESI") related to  
 6 processing Mr. Prugh's application for employment at Defendant, including but not limited to  
 7 emails, notes, or other records stored electronically. Defendant agreed to preserve such emails  
 8 and records related to Mr. Prugh's application in a manner that preserves original content and  
 9 metadata and searchable for metadata. The EEOC also requests that such e-mails not be  
 10 archived which would make retrieval and searching more costly and time consuming, but  
 11 preserved in a manner that will allow for economical and expedient searching. Jacksons Food  
 12 Stores, Inc. has issued an appropriate litigation hold. Otherwise, the Parties do not anticipate that  
 13 this is a case that will generate a large volume of ESI or issues related to discovery of ESI.  
 14

15 D. Privilege Issues

16 The Parties do not anticipate the need to seek discovery of information and/or documents  
 17 protected by the Attorney-Client Privilege, the Governmental Deliberative Process Privilege,  
 18 and/or the Attorney Work Product Doctrine.  
 19

20 E. Proposed Limitations on Discovery

21 The Parties do not anticipate the need for limitations on discovery other than those  
 22 imposed by the federal or local rules, but reserve the right to seek modifications in the future.  
 23

24 F. The Need for Any Discovery Related Orders

1           Given the nature of the dispute and the need to produce discovery regarding Mr. Prugh's  
2           disability and other confidential topics, the Parties will jointly request the entry of an agreed  
3           upon protective order pursuant to Local Civil Rules 5(g) and 26(c)(2) during discovery. No other  
4           orders need be entered by the Court at this time.

5           5.     OTHER ITEMS SET FORTH IN LOCAL CIVIL RULE 26(f)(1)

6           A.     Prompt Case Resolution

7           The Parties will endeavor to be efficient in taking discovery and preparing this matter for  
8           trial, and wherever possible, promote the prompt resolution of discovery disputes without court  
9           intervention.  
10          

11          B.     Alternative Dispute Resolution

12          The Parties agree to explore the possibility of mediation pursuant to Local Rule CR 39.1.

13          C.     Related Cases

14          The Parties are not aware of any related cases.

15          D.     Discovery Management

16          The Parties' views on discovery management are set forth elsewhere in this report.

17          E.     Anticipated Discovery Sought

18          The EEOC's Position: Plaintiff EEOC will seek discovery to establish Defendant's  
19          liability for its discriminatory actions against Mr. Prugh based on disability, and damages  
20          suffered by Mr. Prugh as a result of the discrimination, including but not limited to: discovery  
21          about Defendant's policies and practices regarding hiring; internal communications regarding  
22          Mr. Prugh and other individuals who applied for a Customer Services Rep position, including e-  
23          mails and hard copy documents and/or records; other facts surrounding the processing of Mr.  
24            
25

1 Prugh's application for employment and subsequent withdrawal of his opportunity to interview  
2 for the position sought; and discovery related to Defendant's affirmative defenses.

3 Jacksons Food's Position: Defendant will seek to establish the failure of the EEOC to  
4 meet a condition precedent to filing suit, as well as to establish the absence of liability and the  
5 dearth of evidence of compensable damages by, for example: seeking discovery about the  
6 EEOC's investigation of Mr. Prugh's claims and its efforts to participate in meaningful  
7 conciliation with Defendant. Defendant also anticipates seeking discovery regarding the  
8 information obtained by the EEOC during the administrative process, as well as Mr. Prugh's  
9 employment history, whether he was a qualified individual with a disability, and whether his  
10 alleged request for accommodation was made and/or reasonable. Mr. Prugh's records of his  
11 communication with Defendant, and all information and documents related to Mr. Prugh's  
12 communication abilities and tools or assistance used for this purpose. Defendant also will seek  
13 discovery about Mr. Prugh's alleged damages, including his efforts to mitigate.  
14

15 F. Phasing Motions  
16

17 The Parties do not believe that phasing of motions is necessary, but do propose a deadline  
18 be entered with respect to disclosures of experts.

19 G. Preservation of Discoverable Information  
20

21 The Parties' discussions on this topic are provided above.

22 H. Inadvertent Production of Privileged Information and Other Privilege Waiver  
23 Issues  
24  
25

1 The Parties agree to return privileged documents that have been inadvertently produced  
2 by the party. Treatment of inadvertently produced privileged material will be addressed in the  
3 jointly submitted protective order.

4 I. Model Protocol for Discovery of ESI

5 The Parties anticipate ESI in this case to be limited and do not believe it will be necessary  
6 to adopt the Model Protocol.

7 J. Alternatives to Model Protocol

8 The Parties' discussions on this topic are provided in ¶ 4C above.

9  
10 6. DATE BY WHICH DISCOVERY CAN BE COMPLETED

11 The Parties propose the following litigation schedule:

12 August 17, 2018: Discovery Cut Off

13 October 12, 2018: Dispositive Motion Deadline.

14 February 4, 2019: Trial.

15  
16 7. WHETHER THE CASE SHOULD BE BIFURCATED

17 The Parties do not believe bifurcation of this case is necessary.

18 8. WHETHER PRETRIAL STATEMENTS AND PRETRIAL ORDER PER LOCAL  
19 CIVIL RULE 16(e), (h), (i), AND (k) AND 16.1 SHOULD BE DISPENSED WITH IN  
20 WHOLE OR IN PART.

21 The Parties agree to dispense with the pretrial statements and pretrial order called for by  
22 Local Rules 16 and 16.1.

23 9. WHETHER THE PARTIES INTEND TO UTILIZE THE INDIVIDUALIZED TRIAL  
24 PROGRAM SET FORTH IN LOCAL CIVIL RULE 39.2

1 The Parties do not intend to utilize the Individualized Trial Program set forth in Local  
2 Civil Rule 39.2.

3 10. SUGGESTIONS FOR SHORTENING OR SIMPLIFYING THE CASE

4 The Parties will endeavor to be efficient in taking discovery and preparing this matter for  
5 trial or other disposition.

6 11. DATE THE CASE WILL BE READY FOR TRIAL

7 The Parties believe the case will be ready for trial the week of February 4, 2019.

8 12. WHETHER THE TRIAL WILL BE JURY OR NON-JURY

9 Plaintiff has requested a jury trial.

10 13. NUMBER OF TRIAL DAYS REQUIRED

11 The Parties anticipate the need for five (5) trial days.

12 14. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL TRIAL COUNSEL  
13 COUNSEL FOR EEOC

14 John F. Stanley (206) 220-6896  
15 May Che (206) 220-6919  
16 909 First Avenue, Suite 400  
17 Seattle, WA 98104-1061

18 COUNSEL FOR JACKSONS FOOD STORES, INC.

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23 Portland, OR 97204

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Littler Mendelson, P.C.  
One Union Square

600 University Street, Suite 3200  
Seattle, WA 98101-3122

15. THE DATES ON WHICH TRIAL COUNSEL MAY HAVE COMPLICATIONS TO BE  
CONSIDERED IN SETTING A TRIAL DATE:

The Parties do not have complications to be considered in setting a trial date at this time.

16. SERVICE OF ALL DEFENDANT(S)

Defendant has been served.

17. SCHEDULING CONFERENCE

The Parties do not feel that a Scheduling Conference is necessary prior to a Scheduling  
Order being entered in this case.

18. FED. R. CIV. P. 7.1 AND LOCAL RULE 7.1 DISCLOSURES

Defendant filed its Fed. R. Civ. P. 7.1 and Local Rule 7.1 corporate disclosure on  
September 25, 2017. (ECF No. 6).

19. CONSENT TO HAVING HEARINGS VIDEO RECORDED

The Parties do not consent to having hearings video recorded.

DATED this 30th day of October 2017.

ROBERTA STEELE  
Regional Attorney

JOHN F. STANLEY  
Supervisory Trial Attorney



1 MAY CHE  
2 Senior Trial Attorney

3 BY: /s/ May Che  
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10 *Attorneys for Plaintiff EEOC*

11 BY: /s/ Tamsen Leachman  
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17 *Attorneys for Defendant Jacksons Food Stores, Inc.*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2017, I electronically filed the forgoing "JOINT STATUS REPORT AND DISCOVERY PLAN" with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following individuals listed below:

DATED this 30th day of October, 2017.

/s/ Tamsen Leachman

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